IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 92 of 2007(J)

PETITIONERS:
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1. **JOHN EAPPAN.**

2. **BEENA JOHN,**
   BOTH ARE RESIDING AT KUTTIKANDATHIL HOUSE,
   PARAVATTANY, OLLUKKARA, THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH,
SRI.T.C.SURESH MENON,
SRI.JIBU P THOMAS,
SRI.SUNIL J.CHAKKALACKAL.

RESPONDENTS:
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1. **THE CORPORATION OF THRISSUR,**
   REPRESENTED BY ITS SECRETARY,
   CORPORATION OFFICE, THRISSUR.

2. **THE ASSISTANT ENGINEER,**
   THRISSUR CORPORATION, ZONAL OFFICE,
   OLLUKKARA, THRISSUR.

3. **THE STATE OF KERALA, REPRESENTED**
   BY THE SECRETARY TO LOCAL SELF GOVERNMENT
   INSTITUTIONS, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION,
ADV. SRI.LELLULAL T.G.THUNDATHIL,
ADV. SRI.V.N.HARIDAS,
GOVT. PLEADER SRI. K.J. MOHAMMED ANZAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.92/2007-J:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SALE DEED DTD. 27/12/2004.

EXT.P.2: COPY OF THE SALE DEED DTD. 04/01/2005.

EXT.P.3: COPY OF THE SALE DEED DTD. 30/05/2005.

EXT.P.4: COPY OF THE BUILDING PLAN DTD. 26/10/06.

EXT.P.5: COPY OF THE INTIMATION DTD. 21/12/2006.

EXT.P.6: COPY OF THE ORDER DTD. 16/11/2005.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 92 OF 2007

Dated this the 29th day of October, 2007

JUDGMENT

Ext.P5 order rejecting the petitioner's application for building permit for construction of a shopping complex is under challenge. The reason for rejection is that as per the sanctioned DTP Scheme there is a proposal to have a ring road through the property of the petitioner.

2. Heard Sri.V.Chitambaresh, counsel for the petitioners and Sri.K.B.Mohandas, Standing Counsel for the Corporation and Sri.K.J.Mohammed Anzar, Government Pleader.

3. Mr.Mohandas invited my attention to the judgment of this Court in **Sayeesh Kumar V. State of Kerala** [2005 (4) KLT 1027] and submitted that the Corporation is helpless in the matter and a Division Bench of this Court has ruled that even the Government is not empowered to grant individual exemptions from the notified town planning scheme.

4. Inviting my attention to a Full Bench decision of this Court in **Francis v. Chalakudy Municipality** [1999 (3) KLT 560], Division Bench judgment in **Padmini v. State of Kerala** [1999 (3) KLT 465] and that of the Supreme Court in **Raju Jethmalani & others v. State of Maharashtra & others** {(2005) 11 SCC 222], Mr.Chitambaresh

submitted that this DTP scheme was notified two decades ago and till this moment no concrete action has been taken for implementation of this scheme. The scheme has become oppressive, according to the learned counsel.

Having regard to the rival submissions addressed and the ratio emerging from the various decisions cited at the Bar, particularly, the judgment of the Full Bench in **Francis**'s(supra) case, Division Bench judgment in **Padmini**'s(supra) case and Supreme Court judgment in **Raju Jethmalani**'s (supra) case, I am of the view that the respondents are not justified in insisting that the petitioner should keep his property idle on the reason that a DTP Scheme is in existence. Under these circumstances, I dispose of the Writ Petition issuing the following directions:

The petitioner is directed to file an affidavit before the Corporation stating clearly that, in the event of the Government promulgating a notification under Section 4(1) of the Land Acquisition Act within one year of receiving copy of this judgment for acquiring any portion of his property for the purpose of establishing the ring road which is proposed as per the DTP Scheme, the petitioner will not be entitled for any compensation for the building to be constructed pursuant to the permit

granted under this judgment. The affidavit in this regard will be filed by the petitioner within three weeks from today. Once such an affidavit is noticed by the Corporation, the Corporation will pass fresh orders on the permit application submitted by the petitioner without delay. Existence of the DTP scheme and the proposal to have a ring road shall not be a ground for rejecting the plan. If the plan is otherwise in order, the same will be approved. It is made clear that even after the expiry of the period of one year mentioned in this judgment, the Corporation will be entitled to acquire the property in question for any genuine public purpose. But under such a contingency the petitioner will be entitled for adequate compensation under the Land Acquisition Act for the building also.

PIUS C. KURIAKOSE, JUDGE

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